

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 194 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
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COMMISSIONER OF INCOME TAX

Versus

S.G. CHEMICALS & PHARMACEUTICALS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 194 of 1989
MR T.U.BHATT MR MANISH R BHATT for Petitioner No. 1
MR BHARGAV KARIA FOR MR RK PATEL for Respondent No. 1
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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/09/2002

ORAL JUDGEMENT

1 At the instance of the revenue, the following question of law, arising out of the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has been referred to this Court for its opinion under the provisions of Section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether, in law and on facts, the appellate Tribunal has rightly reached a conclusion that penal provisions could not be invoked in the case of assessee?"

2 We have heard learned Standing Counsel for the Income Tax Department Mr. Tanvish U. Bhatt and learned Advocate Mr. Bhargav Karia for the respondent.

3 The facts giving rise to the present reference in a nutshell are as under.

4 For the assessment year 1975-76, a notice of demand under Section 210 read with Section 156 of the Act dated 7.6.1974 was issued to the respondent-assessee whereby an amount of Rs.1,39,52,730/- was required to be paid by the respondent assessee in three equal instalments during the financial year 1974-75. The said notice had been issued in the light of the following facts.

5 The assessee had submitted his first estimate of income on 13.9.1974 and as per the said estimate, income for the relevant assessment year of the assessee was to be Rs.1,91,13,000/- whereas income estimated by the Income Tax Officer was Rs.2,22,80,040/-. The tax payable was worked out at Rs.1,20,30,690/-. The second estimate dated 12.12.1974 was filed by the assessee estimating his total income at Rs.1,47,95,000/- and tax payable on the basis of the said estimate was Rs.93,44,370/-. Thereafter, the assessee had filed third revised estimate on 13.3.1975. As per said estimate, income of the assessee was to be Rs.1,10,54,000/- and the tax payable as per the said estimate was Rs.69,53,520/-.

6 Finally, return of income was filed declaring the income of Rs.1,53,17,950/- and as per the assessment order, income was assessed at Rs.1,72,39,190/-.

7 In the circumstances stated hereinabove, the proceedings had been initiated under the provisions of Sections 274 and 212(1) of the Act separately. Penalty was imposed under the provisions of Section 212(3) by the

assessing officer.

8 Being aggrieved by the order imposing penalty, the assessee had filed an appeal before the Commissioner of Income Tax (Appeals), who had confirmed the order imposing the penalty. Being aggrieved by the order passed by the Appellate Authority, the assessee had filed an appeal before the Tribunal and the Tribunal had set aside the order passed by the appellate authority confirming the order imposing penalty by the assessing officer on the ground that the assessee was following a system of budgeting and forecasting, and on that basis, different estimates were filed by the assessee from time to time. According to the Tribunal, if there was any variance between the budget figures and the actual figures, it cannot be said that the assessee had a reason to believe that the data furnished was untrue. For the aforesaid reasons, the Tribunal had set aside the order passed by the appellate authority confirming the order imposing penalty.

9 We have heard the learned Counsel appearing for the respective parties and have considered the fact that only after considering all the factual aspects and figures which were placed on record by the assessee, the Tribunal had come to a conclusion that the figures of estimated income which were submitted by the assessee could not have been said to be a submission of untrue estimates by the assessee. As the assessee had submitted the estimates only on the basis of budgeted financial data, which the assessee believed to be correct, in our opinion, there was no case for imposition of penalty because by no stretch of imagination it can be said that the estimates which were submitted by the assessee were believed to be untrue.

10 Looking to the facts of the case, we are of the view that the Tribunal had considered all relevant facts in the light of the correct legal position and had rightly set aside the order imposing the penalty upon the assessee.

11 It is also pertinent to note that this Court has also opined in the case of Sarabhai Chemicals (P) Ltd. Vs. Commissioner of Income-tax, [2002] 121 Taxman 755 (Guj.) that the word 'untrue' means that what is not true, and 'true' in the context would mean that what is in accordance with fact or reality and is genuine, i.e., not spurious. Therefore, the revenue has to establish that the assessee, when it filed a particular estimate, knew or had reason to believe that it was not genuine and

was spurious. Such mental state of the assessee can be inferred from the relevant objective facts. In the instant case, the Tribunal has come to a specific finding that the data which had been submitted by the assessee, while giving the estimates, was based on the budgeted data which the assessee believed to be true.

12 For the aforesaid reason, we are of the view that the Tribunal had rightly reached a conclusion that the penal provision could not have been invoked in the case of the assessee. Under the circumstances, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

13 The reference stands disposed of accordingly. No order as to costs.

Sd/- Sd/-

(A.R.Dave, J)

(D.A.Mehta, J)

m.m.bhatt